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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 426

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

CLARENCE E. HOOD, JR., FRANK F. MIZE, BASCOM C. BEASLEY, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

FILED NOVEMBER 13, 1951

PROBABLE JURISDICTION NOTED DECEMBER 3, 1951

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1-6 In the United States District Court for the Southern District of Mississippi.

Sec. 371, Title 18, U.S.C., and Sec. 215, Title 18, U.S.C.

UNITED STATES OF AMERICA, PLAINTIFF

v.

CLARENCE E. HOOD, JR., FRANK F. MIZE, BASCOM C. BEASLEY, CURTIS ROGERS, FORREST B. JACKSON, MRS. C. V. MURPHY, CLAUDE V. MURPHY, DEWEY MCLEOD, HENRY DEBROW, MARGARET LAVERNE YELVERTON, JAMES H. WILKINSON, AND ROY F. BRASHIER, DEFENDANTS

INDICTMENT—Filed July 19th, 1951

The Grand Jury Charges:

That beginning on or about July 1, 1949, at Jackson, in the Southern District of Mississippi, and continuing thereafter to and including the date of the return and filing of this indictment

CLARENCE E. HOOD, JR.,
FRANK F. MIZE,
BASCOM C. BEASLEY,
CURTIS ROGERS,
FORREST B. JACKSON,
MRS. C. V. MURPHY,
CLAUDE V. MURPHY,
DEWEY MCLEOD,
HENRY DEBROW,
7 MARGARET LAVERNE YELVERTON,
JAMES H. WILKINSON, and
ROY F. BRASHIER,

hereinafter called the defendants, did unlawfully, wilfully and knowingly conspire, combine, confederate, and agree together and with each other, and with some one or more of the following persons: L. W. Rowzee, Earl (Cy) Ball, Arthurine B. Campbell, Douglas Smith, James L. Reeves and Homer Leggett, herein named as co-conspirators, but not indicted, and with divers other persons, to commit certain offenses against the United States, to wit, to violate Section 215, Title 18, United States Code, that is to say:

CLARENCE E. HOOD, JR.,
FRANK F. MIZE,
BASCOM C. BEASLEY,
CURTIS ROGERS,
FORREST B. JACKSON,
MRS. C. V. MURPHY,

CLAUDE V. MURPHY,
DEWEY McLEOD,
HENRY DEBROW,
MARGARET LAVERNE YELVERTON,
JAMES H. WILKINSON, and
ROY F. BRASHIER,

the said defendants, at the place and throughout the time aforesaid, unlawfully, wilfully and knowingly conspired, combined, confederated and agreed that they and each of them would solicit and receive from numerous persons, and cause to be solicited and
8 received from said persons, various sums of money as political contributions to the Mississippi Democratic Committee, and for the personal emolument of the defendants, in consideration of the promise of recommendations, and the promise of support and use of influence on the part of said defendants and the Mississippi Democratic Committee in obtaining for said persons certain appointive offices and places under the government of the United States, to wit: the offices and places of postmaster, rural mail carrier, including transfers to and from said offices and places, and offices and places with and under the Office of Price Stabilization such as Chairman and supervisors of County Ration Boards, all of said offices and places being located, and to be located, in various cities and towns throughout the State of Mississippi; the names of some of said persons, together with the amounts solicited and contributed, and the appointments sought and promised being as follows:

Name	Solicited	Contributed	Appointment
Aubrey W. Stephens	$1,000.00	$1,000.00	Rural carrier at Bovina, Mississippi
Lawrence B. Williams	1,000.00	1,000.00	Rural carrier at Little Rock, Miss.
J. D. Box	500.00	500.00	Rural carrier at Booneville, Miss.
[Fol. 9]			
Roy W. Haines	1,000.00	1,000.00	Rural carrier at Lucedale, Miss.
Oscar L. Watts	1,000.00	1,000.00	Rural carrier at Crystal Springs, Miss.
Grover C. Smith	1,000.00	500.00	Rural Carrier at Sontag, Mississippi
Robert E. Whiteside	500.00	500.00	Rural carrier at Mooreville, Miss.
Charles H. Alford	500.00	500.00	Rural carrier at Philadelphia, Miss.
George B. Kerr	750.00	750.00	Rural carrier at McCook, Miss.
Elmer M. Palmer	600.00	600.00	Acting Postmaster at Cumberland, Miss.
Archie R. Watson	2,000.00	380.00	Rural carrier at Stewart, Mississippi
Eulan G. Moorehead	1,000.00	1,000.00	Rural carrier at Winborn, Miss.

Name	Solicited	Contributed	Appointment
James E. Meadows, Jr.,	750.00	750.00	Rural carrier at Mendenhall, Miss.
Sidney Rivers Ayres	1,000.00	1,000.00	Rural carrier at Winborn, Miss.
W. Denny Russ	400.00	400.00	OPS, Pearl River County, Mississippi
Edgar Earl Sims	300.00	300.00	OPS, Marion County, Mississippi

and others, which by reason of their great number are not listed herein, and

It was further a part of said conspiracy that the defendants, in soliciting and receiving contributions from said persons in the manner and under the circumstances aforesaid, would make and cause to be made additional representations, promises and pretenses to said persons, to the effect that the said contributions would be used by the Mississippi Democratic Committee in furtherance of and in rebuilding the Democratic Party throughout the State of Mississippi; and

It was further a part of said conspiracy that the defendants would, in soliciting and receiving contributions from persons who were applicants for said offices and places, make the additional representations and pretenses that the Mississippi Democratic Committee was in need of funds to meet office expenses; would require of said persons that certain large contributions be made in cash, and would refuse to give receipts therefor; and would use the name and office of the Mississippi Democratic Committee as a means, method and instrument by and through which to obtain large sums in contributions for their own use and benefit.

It was further a part of said conspiracy that the said defendants would fail to maintain books and records reflecting the amount of contributions and money received and disbursed by the Mississippi Democratic Committee, and the names of and amounts contributed by those who were applicants for appointment to the offices and places aforesaid; and

It was further a part of said conspiracy that the defendants would fail to report or disclose to the Mississippi Democratic Committee the amount of money received from the persons solicited as aforesaid and the true purposes for which such money was being used.

It was further a part of said conspiracy that the defendants would recommend, and cause to be recommended for appointment to the said offices and places, numerous persons without regard to their grade or standing on the Civil Service Eligible List, and would make, promise, and cause such recommendations for appointments to be made solely on the basis of whether said persons contributed or promised to contribute various amounts of money to the Mississippi Democratic Committee.

And in furtherance of said conspiracy and to effect the objects

and purposes thereof, the defendants did commit, among others; the following overt acts:

12 1. On or about February 27, 1951, the defendant CURTIS ROGERS, at Raleigh, Mississippi, drew and cashed a check in the sum of $6,000.00 on the account of the Mississippi Democratic Committee in the Bank of Raleigh, Raleigh, Mississippi.

2. During the month of February, 1951, the exact date being to the Grand Jury unknown, the defendant, CURTIS ROGERS, at Jackson, Mississippi, advanced to the defendant ROY F. BRASHIER, from the funds of the Mississippi Democratic Committee, sums of money totalling approximately $2,000.00.

3. During the month of January, 1950, the exact date being to the Grand Jury unknown, the defendant CURTIS ROGERS, at Sylvarena, Mississippi, conferred with the defendant DEWEY MCLEOD, and with James E. Harvey concerning a rural mail carrier job.

4. On or about November 8, 1950, at Jackson, Mississippi, the defendant CURTIS ROGERS received from J. D. Box a contribution in the sum of $500.00.

5. During the month of February, 1950, the exact date being to the Grand Jury unknown, the defendant CURTIS ROGERS, at Sylvarena, Mississippi, conferred with Lawrence B. Williams con-

13 cerning a rural mail carrier job and concerning a contribution in the sum of $1,000.00.

6. During the month of December, 1950, the exact date being to the Grand Jury unknown, in the Century Building, at Jackson, Mississippi, the defendant MARGARET LAVERNE YELVERTON received from Thomas W. Keene the sum of $200.00 in cash.

7. During the latter part of December, 1949, the exact date being to the Grand Jury unknown, the defendant DEWEY MCLEOD, at Mount Olive, Mississippi, received from James W. Walker, the sum of $1,000.00 in cash.

8. During the latter part of December, 1949, the exact date being to the Grand Jury unknown, the defendant DEWEY MCLEOD, at Jackson, Mississippi, conferred with Asa L. Walker and James W. Walker concerning a rural mail carrier job and concerning a contribution in the sum of $1,000.00.

9. During the month of August, 1949, the exact date being to the Grand Jury unknown, the defendant DEWEY MCLEOD, at Mount Olive, Mississippi, conferred with C. Grady Prine concerning a rural mail carrier job.

10. On or about November 1, 1950, the defendant CURTIS ROGERS, at Sylvarena, Mississippi, received from Roy W. Haines

14 the sum of $1,000.00 in cash.

11. On or about April 3, 1950, the defendant FORREST B. JACKSON, in the Century Building, at Jackson, Mississippi, received the sum of $1,000.00 in cash from Eulan G. Moorehead.

12. On or about April 10, 1950, the defendant FORREST B. JACKSON, in the Century Building, at Jackson, Mississippi, conferred with Robert Henry Horne about a rural mail carrier job.

13. On or about April 13, 1950, the defendant FORREST B. JACKSON, in the Century Building, at Jackson, Mississippi, received the sum of $1500.00 in cash from Robert Henry Horne.

14. During the month of October, 1950, the exact date being to the Grand Jury unknown, the defendant FORREST B. JACKSON, in the Century Building, at Jackson, Mississippi, conferred with Ray W. Haines concerning a rural mail carrier job.

15. On or about April 26, 1950, the defendant CURTIS ROGERS, at Jackson, Mississippi, conferred with Aubrey W. Stephens concerning a rural mail carrier job and concerning a contribution in the sum of $1,000.00.

16. During the month of June, 1950, the exact date being to the Grand Jury unknown, the defendant BASCOM C. BEASLEY, in the Century Building, in Jackson, Mississippi, received from Charles H. Alford the sum of $500.00 in cash.

17. On or about April 28, 1950, the defendant BASCOM C. BEASLEY, at the offices of the Mississippi Democratic Committee, at Jackson, Mississippi, conferred with Robert E. Whiteside.

18. On or about July 5, 1950, the defendant BASCOM C. BEASLEY, at the offices of the Mississippi Democratic Committee, at Jackson, Mississippi, conferred with Grover C. Smith.

19. During the month of July, 1949, the exact date being to the Grand Jury unknown, the defendant BASCOM C. BEASLEY, at the offices of the Mississippi Democratic Committee, in Jackson, Mississippi, conferred with Sidney D. Parker concerning a rural carrier job.

20. On or about July 29, 1950, the defendant FRANK F. MIZE, at Jackson, Mississippi, addressed a letter to Acey Carraway of the National Democratic Executive Committee, Washington, D. C.

21. On or about February 5, 1951, at the offices of the Mississippi Democratic Committee, at Jackson, Mississippi, the defendants FRANK F. MIZE, CURTIS ROGERS, and JAMES H. WILKINSON conferred with B. Pat Green and J. W. Maxey.

22. During the month of March, 1950, the exact date being to the Grand Jury unknown, the defendants CLARENCE E. HOOD, JR., FRANK F. MIZE, and CURTIS ROGERS, at the Century Building, in Jackson, Mississippi, conferred with Carl Frank Ferrell.

23. On or about March 25, 1950, the defendant HENRY DEBROW, at Jackson, Mississippi, accompanied Sidney Rivers Ayres from the Walthall Hotel to a place across the street from the Century Building.

24. On or about March 27, 1950, the defendant HENRY DEBROW,

at Jackson, Mississippi, received $1000.00 cash from Sidney Rivers Ayres.

25. On or about March 27, 1950, at Jackson, Mississippi, the defendant BASCOM C. BEASLEY at the offices of the Mississippi Democratic Committee, handed to Sidney Rivers Ayres a copy of a letter dated March 27, 1950, addressed to Hon. B. C. Burke, Deputy Postmaster General, Post Office Department, Washington,
17 D. C.

26. On or about October 6, 1950, at Jackson, Mississippi, the defendant CLARENCE E. HOOD, JR., wrote a letter dated October 6, 1950, addressed to Hon. Joseph H. Lawler, Assistant Postmaster General, Washington, D. C., concerning the appointment of Joseph T. Ruble to the position of Acting Postmaster at West Point, Mississippi.

27. On or about November 20, 1950, at Winona, Mississippi, the defendant Mrs. C. V. MURPHY conferred with George B. Kerr concerning a rural mail carrier job.

28. On or about November 22, 1950, at Winona, Mississippi, the defendant Mrs. C. V. MURPHY cashed a check signed by George B. Kerr in the sum of $500.00.

29. On or about January 26, 1951, at Winona, Mississippi, the defendant Mrs. C. V. MURPHY cashed a check signed by George B. Kerr in the sum of $250.00.

30. On or about January 25, 1951, at Winona, Mississippi, the defendant Mrs. C. V. MURPHY wrote a letter to Mrs. Mary E. Dodd, Swan Lake, Mississippi.

31. During the month of November, 1950, the exact date being to the Grand Jury unknown, the defendants CLAUDE V. MURPHY and Mrs. C. V. MURPHY, at Cumberland, Mississippi, con-
18 ferred with Elmer M. Palmer concerning a postmaster's job and concerning a contribution of $600.00.

32. During the month of October, 1950, the exact date being to the Grand Jury unknown, the defendants CLAUDE V. MURPHY and Mrs. C. V. MURPHY, at Winona, Mississippi, conferred with Henry P. Bingham concerning a rural mail carrier job and concerning a contribution of $300.00.

33. On or about November 7, 1950, at Winona, Mississippi, the defendant Mrs. C. V. MURPHY cashed a check in the sum of $350.00 signed by L. F. Green.

34. On or about February 13, 1951, the defendant ROY F. BRASHIER, at Picayune, Mississippi, solicited W. Denny Russ to become Supervisor of the County Ration Board to be set up in Pearl River County, Mississippi.

35. On or about February 9, 1951, at Columbia, Mississippi, the defendant ROY F. BRASHIER solicited Edgar Earl Sims to become Chairman of the County Ration Board to be set up in Marion County, Mississippi.

36. On or about February 10, 1951, the defendants ROY
19 F. BRASHIER, JAMES H. WILKINSON and MARGARET LAVERNE YELVERTON, at the offices of the Mississippi Democratic Committee, Jackson, Mississippi, conferred with Early Gray Harvey.

37. On or about February 19, 1951, at Jackson, Mississippi, the defendant MARGARET LAVERNE YELVERTON typed a letter dated February 19, 1951, addressed to Mr. H. L. Phares, Phares Motor Company, Woodville, Mississippi.

38. On or about February 5, 1951, the defendant MARGARET LAVERNE YELVERTON, at Jackson, Mississippi, delivered to Mr. J. W. Maxey a letter of the same date, addressed to him at Box 1295, Hattiesburg, Mississippi.

39. On or about December 7, 1950, at Jackson, Mississippi, the defendant CLARENCE E. HOOD, JR., caused a letter dated December 7, 1950, to be addressed and mailed to Hon. Joseph H. Lawler, Assistant Postmaster General, Washington, D. C.

40. On or about December 7, 1950, at Jackson, Mississippi, the defendant MARGARET LAVERNE YELVERTON wrote a letter for the Mississippi Democratic Committee, dated December 7, 1950, and addressed to Mr. John Charles Monroe, Mississippi City,
20 Mississippi.

41. On or about October 9, 1949, at Jackson, Mississippi, the defendants FORREST B. JACKSON, CLARENCE E. HOOD, JR., CURTIS ROGERS, BASCOM C. BEASLEY and FRANK F. MIZE, met and conferred with Milton H. Loflin concerning a rural carrier job.

42. During the latter part of March, 1950, the exact date being to the Grand Jury unknown, the defendant CLARENCE E. HOOD, JR., at Meridian, Mississippi, conferred with Roy W. Hall and Eulan G. Moorehead concerning a rural carrier job.

43. During the latter part of March, 1950, at Meridian, Mississippi, the defendant CLARENCE E. HOOD, JR., placed a long distance call to Jackson, Mississippi, and talked to the defendant BASCOM C. BEASLEY concerning the appointment of Eulan G. Moorehead to the office of rural carrier.

44. On or about October 5, 1950, the defendant MARGARET LAVERNE YELVERTON, in the Century Building, at Jackson, Mississippi, received from Joseph T. Ruble the sum of $500.00 in cash.

21-40 45. During either September, 1949, or October, 1949, the exact date being to the Grand Jury unknown, the defendant CLARENCE E. HOOD, JR., at Meridian, Mississippi, conferred with Alvin L. Sivley, Jr.

46. During the month of March, 1950, the exact date being to the Grand Jury unknown, at Forest, Mississippi, the defendant FRANK F. MIZE conferred with Ralph J. Perkins concerning a rural carrier job.

47. On or about September 26, 1950, the defendant FRANK F.

MIZE, at Forest, Mississippi, conferred with Joseph T. Ruble concerning Ruble's appointment to the job of postmaster.

48. During the month of December, 1949, the exact date being to the Grand Jury unknown, at Forest, Mississippi, the defendant FRANK F. MIZE received from Earl Embrey a cashier's check, payable to FRANK MIZE, in the sum of $250.00.

49. On or about February 5, 1951, at Jackson, Mississippi, the defendant JAMES H. WILKINSON solicited one P. K. McLain to become Chairman of the Office of Price Stabilization County Ration Board to be set up in Lawrence County, Mississippi.

(Section 371, Title 18, United States Code)

41 COUNT THIRTY-ONE

The Grand Jury Further Charges:

That on or about February 8, 1951, at Liberty, and within the Southern District of Mississippi, the defendant,

ROY F. BRASHIER,

did knowingly, wilfully and unlawfully solicit from Early Gray Harvey, as a political contribution, the sum of $300.00 in consideration of the defendant's promise of support and use of influence in obtaining for said Early Gray Harvey an appointive office and place under the United States, namely, an appointment as
42 Chairman of the County Ration Board to be set up and created under the Office of Price Stabilization in Amite County, Mississippi. (Sec. 215, Title 18, United States Code.)

COUNT THIRTY-TWO

The Grand Jury Further Charges:

That on or about February 8, 1951, at McComb, and within the Southern District of Mississippi, the defendant,

ROY F. BRASHIER,

did knowingly, wilfully and unlawfully solicit from Thomas B. Wilkins, as a political contribution, the sum of $300.00 in consideration of the defendant's promise of support and use of influence in obtaining for the said Thomas B. Wilkins an appointment as Chairman of the County Ration Board to be set up and created under the Office of Price Stabilization in Pike County, Mississippi. (Sec. 215, Title 18, United States Code.)

COUNT THIRTY-THREE

The Grand Jury Further Charges:

That on or about February 5, 1951, at Jackson, and
43-172 within the Southern District of Mississippi, the defendant,

JAMES H. WILKINSON,

did knowingly, wilfully and unlawfully solicit from one P. K. McLain, as a political contribution, the sum of $100.00 in consideration of the defendant's promise of support and use of influence in obtaining for the said P. K. McLain an appointive office and place under the United States, namely, an appointment as Chairman of the County Ration Board to be set up and created under the office of Price Stabilization in Lawrence County, Mississippi. (Sec. 215, Title 18, United States Code.)

173 In United States District Court

[Title omitted]

MOTION TO DISMISS COUNT—Filed September 5, 1951

The defendant moves that count 33 and specified overt act 49 of count 1 of the indictment be dismissed on the following grounds:

Count 33 does not state facts sufficient to constitute an offense against the United States for the reason that there is and was no office or place under the United States such as Chairman of a County Ration Board as alleged in said count.

Specified overt act 49 of count 1 charges the solicitation of one to take a position that has never existed under the United States, to-wit: Chairman of the Office of Price Stabilization, County Ration Board. It can, therefore, have no application to the charge of conspiracy under Section 371, Title 18, United States Code to violate Section 215 thereof.

(S.) JAMES H. WILKINSON,
(S.) ALLAN T. EDWARDS,
Atty.

174 Certificate of service (omitted in printing.)

175 In United States District Court

[Title omitted]

MOTION TO DISMISS—Filed September 5, 1951

The defendant moves that the indictment and each Count be dismissed on the following grounds:

I

The indictment and each Count does not state facts sufficient to constitute an offense against the United States.

II

An Investigating Committee of the United States Senate held Hearings on the charges made against the defendant and for the express purpose of securing prosecution against the defendant, and which was used as a basis for presenting said case to the
176 grand jury—using the same evidence and witnesses before the grand jury as was taken and used before the Investigating Committee. In the Hearing before the Committee, the defendant was forced under subpoena, and under threat of prosecution for contempt on refusal to answer, to give evidence before the Committee. And the defendant is now being put to trial on charges as developed before the Committee when he was so compelled to testify. The defendant is entitled to immunity under the Constitution of the United States, Fifth Amendment, and under the laws of the United States against further prosecution on said charges.

The testimony of defendant before the said Senate Committee is not available to him, but is a public record of the United States and is referred to and made exhibit hereto as fully as if set out herein. A copy of such testimony will be furnished if denied or desired.

III

Section 215 of Title 18, United States Code entitled Acceptance or Solicitation to Obtain Appointive Public Office, to violate the terms of which it is alleged in said indictment the defendants conspired to accomplish, is unconstitutional in that it impairs the right of
177 any citizen of the United States to make a contract and deprives persons of their rights guaranteed to them under the laws and Constitution of the United States. Such powers not being delegated to the Congress but expressly reserved to the people or the state under the Ninth and Tenth Amendments to the Constitution of the United States; and is in violation of the Fifth Amendment to the Constitution.

IV

Said Section 215, Title 18 of the United States Code is void for uncertainty as to acts made an offense and ambiguous as to limits with no distinction between proper and improper, or legal and illegal influence, and of persons included or subject thereto.

V

Count I of said indictment attempts to charge the defendants as having conspired to violate Section 215, Title 18, United States Code and in the same Count alleges a violation of said Section, and is therefore void as being duplicitas.

VI

178 The indictment contains immaterial, irrelevant and prejudicial matters, and alleges, in such a way and manner as to be highly prejudicial to the defendants and which cannot be reached by motion to strike, in this:

(a) Six persons are named as co-conspirators, but not indicted, without revealing their connection with the alleged conspiracy, or without setting forth any overt act by them, thus making it appear that these persons are connected in a wide conspiracy with the defendants, and thus by allegation only cast a doubt and suspicion on their testimony as witnesses should any of them be called as witnesses to testify by any of the defendants.

(b) On page three of the indictment, beginning with the name of Aubrey W. Stevens and ending with the name Edgar Earl Sims, sixteen persons are alleged to have, upon solicitation by the defendants, contributed the sum of $13,850.00, for various alleged appointments, and the same is alleged as evidence of the actual violation of Section 215, Title 18 of the United States Code, some of which offices or places under the United States did not exist and
179 have not been brought into existence since, yet the same is made evidence by allegation to be carried by the trial jury, resulting in improper evidence before the jury in the jury room.

(c) In the second paragraph, page three, the indictment alleges that the defendants represented that funds solicited would be used for the re-building of the Democratic Party in Mississippi. It is not alleged that this was an illegal or improper use of such funds. The said allegation is no part of the offense charged, but as a part of the indictment will be carried into the jury room and calculated to unduly influence and prejudice the minds of the jurors who may belong to the so-called State Rights, and to unduly influence those jurors who may be prejudiced against the National Democratic Party and the National Administration.

VII

Paragraph three, beginning page three, and Paragraphs two, three and four, page four of the indictment, contains no allegation of violation of any law of the United States and no allegation of conspiracy to violate any law of the United States, but con-
180 tains statements, as statements of fact calculated to influence and prejudice the minds of the jury in the trial of said case, particularly in the jury room.

VIII

The allegations of overt acts from 1 to 49, both inclusive, beginning on page four of the indictment and running to Count II, page ten, are not allegations of overt acts towards the conspiracy or indicating conspiracy. The said acts are not within themselves illegal and there is no allegation of the way or manner in which they effect the conspiracy. The alleged overt acts are abstract statements of fact stated as evidence in the indictment to be carried into the jury room by the trial jury.

IX

It was necessary to allege and prove the overt acts committed by the defendant in furtherance of the alleged illegal conspiracy. It is alleged in overt act 34, page eight, that the defendant, Roy F. Brashier, at Picayune, Mississippi solicited W. Denny Russ to become Supervisor of the County Ration Board for Pearl
181 River County, when as a matter of fact no such office or place under the United States under the Office of Price Stabilization or otherwise had been established, set up, designated or promulgated at the time, nor had any other such office or place on a county level been established, set up, designated or promulgated in February, 1951 or since.

X

The defendant, Roy F. Brashier, is alleged to have conspired with the other defendants to sell offices and places with and under the Office of Price Stabilization such as Chairman and Supervisor of County Ration Boards, and in overt act 35, page eight of the indictment it is alleged that the said defendant on February 9, 1951 solicited Edgar Ernest Sims to become Chairman of County Ration Board in Marion County, Mississippi when no such office or place under the United States under Office Price Stabilization had been established, set up, designated or promulgated, nor had any other such office or place on a county level been established, set up, designated or promulgated in February, 1951 or since.
182 And the defendant could not conspire to do the impossible.

XI

Count Thirty-one, page 21 of the indictment, charges the defendant as having on February 8, 1951 at Liberty, Mississippi solicited from Early Gray Harvey, as a political contribution, the sum of $300.00 in consideration of his promise of support and use of influence in obtaining for said Harvey, an appointive office and place under the United States, namely, an appointment as Chairman of the County Ration Board to be created under Office of Price Stabilization in Amite County, as being violation of Section 215, Title 18, United States Code, when no such office or place under the United States under Office Price Stabilization or otherwise on said date or since had been established, set up, designated or promulgated nor had any such office or place been created upon a county level.

The defendant therefore could not conspire to sell or use his influence in acquiring an office or place not in existence nor was promulgated.

183

XII

Count Thirty-Two, page 21 of the indictment, alleges that the defendant on February 8, 1951 at McComb solicited from Thomas B. Wilkins as a political contribution $300.00 in consideration of a promise of support and use of influence to obtain for said Wilkins an appointment as Chairman of the County Ration Board to be set up and created under Office of Price Stabilization for Pike County and does not allege with whom he was to use his influence and whether or not such party themselves passed any influence or power, when in fact no such an office or place under the United States or under Office of Price Stabilization had been established, set up, designated or promulgated at that time or since. The defendant therefore could not conspire to sell an office or position not in existence nor never having been promulgated.

XIII

Because it is shown by reasonable inference and interpretation that this defendant was connected with the Democratic Committee for the period of time of only six days in that the overt acts 184-191 and Counts alleged against him in the indictment covers the period of time from February 8, 1951 to and through February 13, 1951, and the acts and charges alleged against him were to use his influence to have the named parties appointed to the office or place of County Chairman for their respective counties for the Ration Board Office Price Stabilization when in fact

no such office and place existed or had been contemplated then or since.

(S.) J. ED FRANKLIN,
Attorney for Defendant, Roy F. Brashier,
1411-12 Deposit Gy. Bk. Bldg.,
Jackson, Mississippi.

192 In United States District Court

[Title omitted]

STIPULATION—Filed September 5, 1951.

It is stipulated and agreed by and between the attorneys representing the Government and attorneys representing the defendant in the above styled and numbered case that no office or place under the United States known as Supervisor or Chairman of a County Rationing Board under Office Price Stabilization for the District of Mississippi either in February 1951 and up to and including the date of the return of the indictment herein has been established, set up, or designated in the State of Mississippi, nor has any such office, place or position on a county level been established, set up or designated in the State of Mississippi during either the month of February, 1951 and up to and including the date of the
193 return of the indictment herein.

Witness our signatures this 5th day of September, 1951.

(S.) BEN BROOKS,
(S.) JOSEPH E. BROWN,
(S.) ROBERT E. HAUBERG,
Attorneys for the United States Government.
(S.) J. ED. FRANKLIN,

Attorneys for Defendant.

194 In United States District Court

No. 2164

UNITED STATES OF AMERICA, PLAINTIFF

VS.

CLARENCE E. HOOD, JR., ET AL., DEFENDANTS

ORDER—Filed September 6, 1951

Coming on to be heard a motion to dismiss of the defendant, Roy F. Brashier, and motion to dismiss of the defendant, James H. Wilkinson, and that portion of the motions of the several defend-

ants dealing with the question of the Office of Price Stabilization in Mississippi, the same being consolidated by the Court for the purpose of hearing, and the Court taking judicial notice that no office or place of Chairman of the County Ration Board under the Office of Price Stabilization for the District of Mississippi had been created or was in existence during the period of time covered by the indictment in this cause, and the Court having heard and considered the argument of counsel on both sides, it is considered and so ordered that said motions be and the same are hereby sustained and the indictment dismissed as to the defendant Roy F.
195-200 Brashier on Counts 31 and 32, and said indictment is dismissed as to defendant James H. Wilkinson on Count 33 of said indictment, and that all portions of Count 1 of the indictment dealing with offices or places as Chairman or Supervisor of County Ration Boards under the Office of Price Stabilization and the overt acts thereunder dealing with such offices or places are hereby stricken as surplusage.

The plaintiff in open Court excepting to the action of the Court, the exception is hereby allowed.

Ordered this 6th day of September, A. D. 1951.

(S.) ALLEN COX,
United States District Judge.

201 In United States District Court

[Title omitted]

NOTICE OF APPEAL—Filed October 4, 1951

The United States hereby appeals to the Supreme Court of the United States from the order of the United States District Court for the Southern District of Mississippi, entered September 5, 1951, dismissing the indictment charging the defendants with violations of 18 U.S.C. 215 and conspiracy to violate 18 U.S.C. 215.

Dated October 4, 1951.

(S.) PHILIP B. PERLMAN,
Solicitor General,
Department of Justice,
Washington, D. C.

202-213 (S.) JOSEPH E. BROWN,
United States Attorney,
Southern District of Mississippi.

214 In United States District Court

[Title omitted]

NOTICE PURSUANT TO RULE 12, PARAGRAPH 2 OF THE RULES OF THE SUPREME COURT—Filed October 4, 1951

To Clarence E. Hood, Jr., et al.:

Pursuant to Rule 12, Paragraph 2, of the Rules of the Supreme Court of the United States, you are hereby notified that the United States, on October 4, 1951, filed a notice of appeal to the Supreme Court of the United States from the order of the District Court dismissing the indictment, and you are hereby served with a copy of a statement as to the jurisdiction of the Supreme Court in the above-entitled cause.

Your attention is directed to the provisions of Rule 12, paragraph 3, of the Rules of the Supreme Court of the United States, copied in the margin.

(S.) JOSEPH E. BROWN
United States Attorney
Southern District of Mississippi

215 Service is acknowledged this 4th day of October, 1951.
(S.) J. ED FRANKLIN
Counsel for Appellee, Atty. for Defendant Roy F. Brashier

Service is acknowledged this 5th day of October, 1951.
(S.) WILL S. WELLS
Counsel for Appellee, Forrest B. Jackson

Service is acknowledged this 4th day of October, 1951.
(S.) ALLAN T. EDWARDS
Counsel for Appellee, J. H. Wilkinson

Service is acknowledged this 8th day of October, 1951.
(S.) BIDWELL ADAM
Counsel for Appellee, Curtis Rogers

Service is acknowledged this 10th day of October, 1951.
(S.) W. W. DENT
Counsel for Appellee, Dewey McLeod

216-221 Service is acknowledged this the 8th day of October, 1951.
(S.) R. W. THOMPSON, JR.,
Counsel for Appellee, Frank F. Mize

Service is acknowledged this the 19th day of October, 1951.
(S.) W. S. HENLEY,
Counsel for Appellee, Clarence E. Hood, Jr.

Service is acknowledged this the 8th day of October, 1951.

(S.) A. F. SUMMER,
Counsel for Appellee, Bascom C. Beasley.

222 In United States District Court

[Title omitted]

STATEMENT OF PROCEEDINGS IN THE DISTRICT COURT—Filed October 18, 1951

Come the Appellees (Defendants), upon being advised that the stenographer appearing in court at the hearing on September 5, 1951, did not take stenographic notes of the proceedings at said hearing or report the same, and serves on the United States the following statement of the proceedings for use instead of a stenographic transcript, and in order that the record may truly disclose what occurred in the District Court, to-wit:

1. This case was, by the court, set for call and the bonds were made returnable before the court at Jackson, Mississippi at 9:00 o'clock A. M., on September 5, 1951.

2. The Defendants filed, on said date or on a subsequent date by leave of the court then obtained, their motions to dismiss and other pleadings, setting up their contentions that the statute
223 on which the indictments were based, to-wit 18 U.S.C.A. 215, was unconstitutional and the other points and contentions as set forth in said several pleadings, for whose terms reference is here made.

3. The defendants announced that they were ready to take up their said several motions and requested that the court proceed to hearing on them.

4. The United States announced that it was not prepared to proceed to hearing on said motions except that it was prepared to present the pending pleadings insofar as they dealt with the question of the Office of Price Stabilization in Mississippi and of the Chairman of the County Ration Board under said office, and requested that the court consider Defendants' pleadings only insofar as they related to said question.

5. Thereupon all parties argued and presented said question of whether the indictment and the counts thereof resting on charges relating to the Chairman of the County Ration Board under the office of Price Stabilization for the District of Mississippi, was sufficient in law under said statutes; and the decision of the
224 United States District Court was based solely on said argument and presentation; and the question of the constitutionality of said statutes and the other questions raised by Defend-

ants' pleadings were not presented to, or considered or passed on by said Court.

Defendants request that the United States stipulate that the foregoing shall be considered the correct record of proceedings in the District Court and if the United States will not so stipulate, they request that the United States proceed to serve its objections thereto for presentation to the Court in due course, all as provided by law and the Rules of the Courts.

(S.) W. S. HENLEY,
(S.) WILL S. WELLS,
(S.) R. W. THOMPSON, JR.,
(S.) E. B. TODD,
(S.) J. ED. FRANKLIN,
(S.) ALLAN T. EDWARDS,
(S.) JEFF WILLS,
For the Defendants.

ALBERT SIDNEY JOHNSTON, JR.
BIDWELL ADAM,
A. F. SUMMER,
CLARENCE R. SCALES.

Service of the foregoing Statement of Proceedings in The 225-231 District Court acknowledged this Oct. 18th, 1951, but no stipulation is made as to the statement.

(S.) JOSEPH E. BROWN,
United States Attorney.

232 In United States District Court

[Title Omitted]

ORDER SETTLING PORTION OF RECORD ON APPEAL—Filed November 5, 1951

Upon considering the statement of Proceedings at the hearing prepared and filed and served by Appellees on Appellant on October 18, 1951; and Appellant having filed of served no objections or proposed amendments thereto within ten days after October 18, 1951; and the Court having examined said statement and found that it correctly sets forth the proceedings at the hearing in which the Order was entered from which the appeal is prosecuted; it is ordered and decreed that the Statement of Proceedings in the District Court filed on October 18, 1951, be, and it is, settled, and approved and that said statement be included by the Clerk of the Court in the record on appeal.

Ordered, adjudged and decreed at Oxford, Mississippi, this 3rd day of November, 1951.

(S.) Allen Cox
U. S. District Judge

233 Clerk's Certificate to foregoing transcript omitted in printing.

234 In the Supreme Court of the United States

October Term, 1951

No. 426

[Title Omitted]

Statement of Points to Be Relied Upon and Designation of Record—Filed November 19, 1951

Pursuant to Rule 13, paragraph 9, of this Court, appellant states that it intends to rely upon the following points:

1. The District Court erred in holding that 18 U.S.C. 215 applies only to presently existing appointive offices and not to the sale of potential federal offices authorized by law but not yet actually created, such as the office of Chairman of the County Ration Board under the Office of Price Stabilization for the District of Mississippi, involved in this case.

2. The District Court erred in granting the motions to dismiss the indictments as to counts 31, 32 and 33.

Appellant deems the following parts of the record, as filed in the above-entitled case, necessary for the consideration of the points to be relied upon:

1. Counts 31, 32, and 33 of the indictment (page 41, line 10 to page 43, line 12).

2. Motion of appellee Wilkinson to dismiss Count 33 of the indictment (pages 173 to 174).

3. So much of the motion of appellee Brashier to dismiss the indictment as relates to counts 31 and 32 (page 175, lines 1-9 ending with "following grounds"; page 182, line 3, beginning with XI to end of page 184).

235-236 4. Stipulation (pages 192 to 193).

5. Order (pages 194 to 195).

6. Notice of Appeal (pages 201 to 202).

7. Statement of Proceedings (pages 222 to 225).

8. Order settling Portions of Record on Appeal (page 232).

Philip B. Perlman
Solicitor General

[File Endorsement Omitted]

237 In the Supreme Court of the United States

[Title Omitted]

APPELLEES' DESIGNATION OF ADDITIONAL PARTS OF RECORD TO BE PRINTED—Filed November 29, 1951

Come the appellees, pursuant to paragraph 9 of Rule 13 of this Honorable Court, and designate the following portions of the record to be printed in addition to the portions designated by appellant:

1. Count 1 of the indictment.

2. The entire motion of appellee Brashier to dismiss the indictment.

J. ED FRANKLIN
ALLAN EDWARDS
BEN F. CAMERON
J. WILL YOUNG
WILL S. WELLS
FRED BERGER
CLARENCE R. SCALES
BIDWELL ADAM
ALBERT S. JOHNSTON
W. W. DENT
E. B. TODD
T. J. WILLS
ROBERT W. THOMPSON, JR.
W. S. HENLEY

238 Certificate of service (omitted in printing)

239 In the Supreme Court of the United States

APPELLEE'S SUPPLEMENTAL DESIGNATION OF ADDITIONAL PARTS OF RECORD TO BE PRINTED—Filed November 29, 1951

Come the appellees, and designate the following portions of the record to be printed in addition to the portions designated by appellant and in addition also to the portions heretofore designated by appellees:

1. The notice served on appellees (evidently being the notice appearing at page 214 of the typewritten record), together with acknowledgment of service of said notice by Ed Franklin, attorney for defendant Brashier, Will Wells, attorney for defendant Forrest Jackson, Allan Edwards, attorney for defendant Wilkinson, Bidwell Adam, attorney for defendant Rogers, W. W. Dent, attorney for defendant McLeod, R. W. Thompson, Jr., attorney for defendant

Mize, W. S. Henley, attorney for defendant Hood, A. F.
240-241 Summer, attorney for defendant Beasley.

J. Ed. Franklin,
Allan Edwards,
Ben F. Cameron,
J. Will Young,
Will S. Wells,
Fred Berger,
Clarence R. Scales,
Bidwell Adam,
Albert S. Johnston,
W. W. Dent,
E. B. Todd,
T. J. Wills,
Robert W. Thompson, Jr.,
Ben F. Cameron.

Certificate of Service (omitted in printing).

242 Supreme Court of the United States. October Term, 1951

No. 426

[Title omitted]

Order Noting Probable Jurisdiction—December 3, 1951

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary docket.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1952 892140 599